

HIGHLY CONFIDENTIAL - R. RICCI
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11
LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.
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* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF RICH RICCI

New York, New York

September 8, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24547

1 HIGHLY CONFIDENTIAL - R. RICCI

2 September 8, 2009

3 9:56 a.m.

4
5 HIGHLY CONFIDENTIAL deposition
6 of RICH RICCI, held at Jones Day,
7 LLP, 222 East 41st Street, New York,
8 New York, before Kathy S. Klepfer,
9 a Registered Professional Reporter,
10 Registered Merit Reporter, Certified
11 Realtime Reporter, Certified Livenote
12 Reporter, and Notary Public of the
13 State of New York.
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2 buying a balance sheet, if that's where you're
3 headed, but really buying, you know, a series of
4 assets and assuming some liabilities and, you
5 know, starting on that premise.

6 Q. Was there any conversation at that
7 time concerning whether or not Barclays was
8 prepared for the acquisition of the Lehman
9 assets to have an adverse impact on its capital?

10 A. We were clear, given the uncertain
11 environment as an organization, that we did not
12 want to pursue a transaction that could have
13 negative impacts on our capital.

14 Q. And with whom did you have that
15 conversation or series of conversations?

16 A. I would have had that conversation
17 with John Varley, with Mr. Diamond, Patrick
18 Clackson, with Michael Klein.

19 Q. Anyone else?

20 A. Not that I can recall.

21 Q. Would Mr. Keegan have known that it
22 was the intention of Barclays not to have an
23 adverse impact on its capital in the acquisition
24 of assets from Lehman Brothers?

25 MR. HUME: Objection. Lacks

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2 foundation.

3 A. Mr. Keegan could possibly have been
4 aware.

5 Q. What about Mr. King?

6 MR. HUME: Same objection.

7 A. I don't know if Mr. King knew or not.

8 Q. Now, after you had that conversation
9 with Mr. Klein and you talked in these general
10 subjects, assets, people and buildings, what did
11 you do concerning the Lehman transaction?

12 A. I don't recall, actually.

13 Q. Okay. Did you stay at the offices of
14 Barclays throughout the day?

15 A. I went over to Lehman Brothers'
16 offices at some point in the day, yes.

17 Q. Why did you go over to Lehman?

18 A. We were negotiating with Lehman which
19 assets we may purchase and which liabilities we
20 may assume.

21 Q. When you say "we"?

22 A. Barclays Group.

23 Q. Okay. Were you in those
24 conversations?

25 A. I was in -- I was in conversations

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2 with the Barclays side. Not directly on the
3 Lehman's, with the Lehman people.

4 Q. Okay. Am I correct that the people
5 with whom you would have had conversations as to
6 which assets Barclays was interested in
7 purchasing and at what prices would have been
8 Mr. King and Mr. Keegan?

9 A. Mr. King, Mr. Keegan, Mr. Clackson.

10 Q. All right. Did you give them any
11 instructions at that time as to what assets they
12 ought to be considering and at what prices they
13 should consider?

14 A. At that time during the week, again,
15 we were very concerned with all the uncertainty
16 in the market and the potential risk we were
17 taking to ensure that we, whatever assets we did
18 take, were taken at the appropriate price. That
19 would have been my steer.

20 Q. And by "appropriate price," you mean a
21 price at which their acquisition would not have
22 had an adverse impact upon the capital at
23 Barclays, correct?

24 A. No.

25 Q. What do you mean?

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2 A. The appropriate price would have been
3 the best estimate of market value given all the
4 uncertainty in the market.

5 Q. Did you give them that instruction on
6 Monday?

7 A. I believe I did.

8 Q. And did you give them any parameters
9 of any kind concerning how they should evaluate
10 what the appropriate price was?

11 A. They know their desks and their books
12 better than I do. I didn't give them any
13 specific instructions on how to value the
14 assets.

15 Q. Do you know if on Monday they were
16 looking at specific Lehman assets or only
17 classes of assets, or both?

18 MR. HUME: Objection. Vague.

19 A. I don't recall if they were looking at
20 classes, you know, at general classes of assets
21 or they had gotten down to the detail that
22 quickly.

23 Q. Did you advise them one way or the
24 other as to whether they should look at specific
25 assets as opposed to classes of assets on that

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2 Monday?

3 A. I didn't advise them specifically, no.
4 Certainly understanding their books, they would
5 have wanted to look at some point at individual
6 assets.

7 Q. There's a concept of Risk-weighted
8 assets, correct? Does that mean anything to
9 you?

10 A. Yes.

11 Q. Okay. Was there any instruction given
12 to them concerning the nature of the assets that
13 they should consider on a risk-weighted basis?

14 A. I don't recall. Not from me.

15 Q. At any time during your discussions
16 with the Barclays team, was there any discussion
17 about the relative risk associated with specific
18 assets or with specific assets or classes of
19 assets?

20 A. Risks associated with assets?

21 Q. Uh-huh, on a risk-weighted basis.

22 A. On a risk-weighted basis?

23 Q. Yes.

24 A. I don't recall specifics.

25 Q. Okay. At any point on that Monday did

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2 you have any conversations with anybody as to
3 how much additional capital Barclays would need
4 in order to acquire those portions of Lehman
5 that it was considering taking in?

6 A. I recall sometime on the Monday I
7 think that there was a first estimate of an
8 estimate of a number of additional capital we
9 might need in the broker-dealer to support an
10 acquisition of assets.

11 Q. Do you remember what that number was?

12 A. No, I don't.

13 Q. Do you remember who came up with it?
14 Let me strike that.

15 Do you remember who told you the
16 number?

17 A. No, not precisely.

18 Q. You didn't, in any event, I take it,
19 come up with that number?

20 A. No.

21 Q. Do you have any recollection of what
22 the number was?

23 A. Not that I recall.

24 Q. I think I'm right that during this
25 time period there was a four-hour difference

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2 Q. Article IX refers to a financial
3 schedule. Do you see that reference?

4 A. Page 34?

5 Q. It's page 35, actually, I think, in
6 the fifth line. Do you see the reference to a
7 financial schedule?

8 A. Let me get there.

9 Yes.

10 Q. Okay. Do you recall having seen the
11 financial schedule referred to in Article IX of
12 the APA?

13 A. I don't recall.

14 Q. I show you what's previously been
15 marked as Exhibit 19, Mr. Ricci. Have you ever
16 seen that schedule before?

17 A. I don't recall seeing it.

18 Q. Do I take it that you don't know one
19 way or the other whether this is the schedule
20 referred to in Article IX?

21 A. That's correct.

22 Q. Now, when you saw the draft of the APA
23 prior to its execution -- strike that. When you
24 saw the definition of "purchased assets" in the
25 APA prior to its execution, did it reference

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2 that the assets that were being acquired
3 approximated \$70 billion?

4 A. What page is it on?

5 Q. Page 6.

6 A. Yes.

7 Q. Okay. Did that number ever change in
8 any of the drafts of the APA that you saw?

9 A. I don't recall.

10 Q. That \$70 billion reflects a discount
11 off of the Lehman marks as of that time,
12 correct?

13 MR. HUME: Objection. Vague.

14 A. I don't recall.

15 Q. Do you recall that the assets that
16 Barclays agreed to purchase on Monday, the 15th,
17 or Tuesday, the 16th, were priced at a discount
18 off of Lehman's marks?

19 MR. HUME: Objection. Vague and
20 ambiguous. Off of which marks?

21 MR. CARDEN: Those would be Lehman's
22 marks. That's what was in the question.

23 MR. HUME: As of what time? It's not
24 clear because it's not clear what time.

25 Marks as of when?

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2 BY MR. CARDEN:

3 Q. With that assistance, Mr. Ricci, go
4 ahead and answer the question.

5 A. We didn't purchase a balance sheet, so
6 we purchased a series of assets and assumed a
7 series of liabilities. The purchase of the
8 assets, any marks on those assets would have
9 been reflective of what we believed the fair
10 price for those assets was. I can't speak for
11 what was on Lehman's books.

12 Q. I'm just asking what you know. Do you
13 know whether or not the prices at which Barclays
14 agreed to purchase those assets reflected a
15 discount off of Lehman's marks for those assets?

16 A. The timing of the question is
17 important because if we were working off a
18 Lehman balance sheet of Friday night or Lehman
19 accounts of Friday night, if we were valuing
20 those on Monday, the world collapsed. There
21 would have been, you know, significant
22 write-downs in any assets.

23 Q. My question is a different one, Mr.
24 Ricci. You either know it or you don't know it.

25 The question is do you know that the

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2 prices at which Barclays was agreeing to
3 purchase the assets reflected in the Asset
4 Purchase Agreement which are given at
5 approximately \$70 billion reflect a discount off
6 of whatever Lehman marks existed as of that
7 time?

8 A. As of what time, sir?

9 Q. As of the time that this was executed,
10 sir.

11 MR. HUME: Objection. Lacks
12 foundation as to what that date is.

13 A. I can't speak for every single asset,
14 but in order to try to answer your question, if
15 there -- given what I know about the timing of
16 when we first started looking at their assets
17 versus when this agreement was signed, I would
18 think there would have been a discount, yes, of
19 Lehman assets -- the Lehman marks on their
20 assets, yes.

21 Q. I'm just talking about the marks. I'm
22 not talking about what Barclays thinks they're
23 worth. I'm only talking about whether it
24 reflected a discount off of Lehman marks.

25 MR. SCHILLER: He can hear you. Don't

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2 raise your voice.

3 MR. CARDEN: Just so the record is
4 clear, I didn't raise my voice. I don't
5 think anyone around the table will say so.
6 So whatever purpose you intended by that is
7 really irrelevant.

8 MR. SCHILLER: I was just reacting to
9 you.

10 Q. Please continue. I speak softly, Mr.
11 Ricci, so if it comes up a notch, perhaps it may
12 seem loud.

13 Did you make any instructions to Mr.
14 Keegan or Mr. King about valuing the assets that
15 were being acquired by Barclays at a price so as
16 to, if you will, cover the liabilities being
17 assumed by Barclays?

18 A. I don't understand the question.

19 Q. Well, Barclays was assuming some
20 liabilities in this transaction, wasn't it, sir?

21 A. Yes.

22 Q. How much were those liabilities, do
23 you remember?

24 A. At this point in the transaction, I
25 don't remember.

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2 Q. The initial transaction on that Monday
3 would have had Barclays acquiring certain short
4 positions, wouldn't it?

5 A. Yes.

6 Q. Do you recall that those short
7 positions were estimated at approximately 69
8 billion?

9 MR. HUME: Objection. Asked and
10 answered.

11 A. I don't recall what they were.

12 Q. Look at page 12, sir.

13 A. Of the APA?

14 Q. Yes.

15 A. Okay.

16 Q. Do you recall that?

17 A. No.

18 Q. Okay. Do you recall at the time the
19 APA was executed how much the asset -- pardon
20 me -- how much the liabilities being assumed by
21 Barclays were?

22 MR. HUME: Objection. Asked and
23 answered.

24 A. At the time that this APA was
25 executed?

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2 Barclays' standpoint was at a price to give
3 Barclays a cushion, wasn't it?

4 MR. HUME: Objection. Vague and
5 ambiguous.

6 Q. In terms of market movements?

7 A. That depends on the asset.

8 Q. Was it --

9 A. Depends if they were illiquid assets
10 or there were market prices. We were trying to
11 do our best to determine what the right and
12 appropriate price was.

13 Q. Let's just take the liquid assets for
14 a moment. Was it the case that the prices that
15 Barclays was prepared to pay for the Lehman
16 assets on Monday set by Barclays so as to
17 achieve a cushion against market risk during
18 that time period?

19 MR. HUME: Objection. It lacks
20 foundation and you have asked this question
21 already.

22 A. Again, the instructions were to buy
23 the assets at an appropriate price. The
24 appropriate price would reflect either, you
25 know, market price or the illiquidity premium,

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2 if they weren't liquid assets, and that was the
3 instruction that was given.

4 Q. How did you intend for Barclays to
5 have the cushion you described it needed to be
6 accomplished in the purchase of those assets?

7 A. There were several ways to achieve it,
8 we had hoped. One was to ensure that in any
9 price we were paying for assets, particularly
10 illiquid prices, illiquid assets, of which there
11 were a lot, that we had an appropriate liquidity
12 premium in our price.

13 Secondly, as I've already testified,
14 on the comp and the cure payments, we had hoped
15 that we could pay less than what we had assumed
16 but recognize that we might have to assume
17 those. And also, we had intangible assets, that
18 is, you know, accounting function that might
19 help create some cushion. Those were the big
20 components.

21 Q. Did you provide a percentage for the
22 liquidity risk that you described?

23 A. No.

24 Q. Did you ask Mr. Keegan or Mr. King
25 what such -- what an appropriate liquidity

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2 percentage would be?

3 A. No.

4 Q. Which assets in particular are you
5 referring to as having been illiquid in
6 connection with the initial Lehman transaction
7 on Monday and Tuesday?

8 A. As I recall, there was -- there was
9 some mortgages which were certainly illiquid. I
10 don't remember what type of real estate may have
11 been on there. I don't recall any specifics
12 beyond that.

13 Q. I'm going to --

14 A. But they were very illiquid markets at
15 the time.

16 Q. I'm sorry.

17 A. That's okay.

18 Q. I'm show you what's been marked
19 Exhibit 19. I realize you haven't seen that
20 before, but there has been testimony that's the
21 schedule that's referred to in Article IX of the
22 APA. There is a list of assets on the left-hand
23 column. You see that? Starts with "government"
24 and has 40 billion there?

25 A. Uh-huh.

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2 purchase the \$70 billion of assets contemplated
3 in Lehman 2 and also take the assets that were
4 supporting the Fed repo, were you?

5 A. Best I recall, the reason that we
6 weren't was really the failure to identify those
7 assets in what you refer to as transaction 2
8 rather than a conscious decision to say we're
9 going to do one versus the other.

10 Q. Okay. Now, on the morning of the
11 19th, you testified that you were concerned as
12 to whether or not Barclays had sufficient assets
13 for its protection, right?

14 A. Yes.

15 Q. Did you talk to anybody about that
16 concern? Did you take any action?

17 A. I would have spoken certainly to Mr.
18 LaRocca, I would have spoken to Mr. Clackson,
19 and I would have spoken to Mr. Klein as to my
20 concerns around securing, you know, assets
21 appropriate for our protection.

22 Q. Did you talk to anybody at Lehman
23 about that, about your concern?

24 A. I don't know if I talked particularly
25 about the concern. I certainly would have had

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2 conversations about other assets.

3 Q. On Friday morning, Barclays had laid
4 out 45 billion, correct?

5 A. Correct.

6 Q. You were concerned about Barclays
7 being protected, which means you wanted a
8 certain quantum of assets in order for it to be
9 at least made whole, right?

10 A. I wanted as much protection I could
11 get given the uncertainties in the market, yes.

12 Q. Did you have in your own mind a target
13 for how much in assets you believed it was
14 necessary over and above the \$45 billion that
15 you had outlaid for Barclays to be protected?

16 MR. HUME: Objection. Asked and
17 answered before lunch several times.

18 A. I didn't have a specific number in
19 mind.

20 Q. Did you have a general number?

21 A. I didn't have a general number in
22 mind. Again, my instructions have been
23 consistent to make sure that any assets we were
24 taking were at the appropriate values, and I was
25 also hopeful that the estimates that had been

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2 made for comp and cure payments through
3 leveraging, you know, Barclays' platforms, we
4 might be able to underspend to create some
5 cushion. But it was an environment where
6 valuations were very, very, very difficult and
7 uncertain, I think as evidenced by the fact that
8 we didn't determine the final valuation of these
9 transactions until February of '09.

10 Q. But you weren't relying on Friday
11 morning about the possibility that Barclays
12 could underspend on the comp and the cure pieces
13 in order to develop the cushion that you wanted
14 Barclays to have, were you?

15 A. We were looking at various scenarios
16 that might estimate what a possible cushion
17 might be. It clearly, in that environment, was
18 so uncertain that you couldn't bid on anything,
19 but we were running some scenarios that we
20 thought might give us enough comfort that we
21 could execute the transaction with some sense of
22 cushion.

23 Q. Did the scenarios involve both an
24 element of how little you might be able to spend
25 on comp and cure plus what discounts you might

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2 be able to purchase certain assets at? What
3 were the components of the scenarios?

4 A. We, by the Friday, the 19th, we had,
5 you know, again, we were hopeful that we could,
6 you know, leverage other Barclays' platforms or
7 find other ways to underspend.

8 We were also, you know, ensuring that
9 when we were pricing assets, for instance, on
10 the illiquid side, that we were factoring in an
11 appropriate liquidity premium that might give us
12 some protection if we couldn't move the assets.

13 Q. Let me try again to ask what I meant
14 to ask a little while ago. On Friday morning,
15 it was not your view that Barclays' possible
16 ability to underspend on comp and cure was what
17 you were going to rely on for coming up with a
18 cushion to protect Barclays Capital by itself?

19 MR. HUME: Object to the form of the
20 question.

21 A. We were looking at it in pieces. So,
22 again, I didn't have a particular number in
23 mind. We needed to make sure that, in the very
24 uncertain environment, we would have purchased
25 assets recognizing that uncertain environment,

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2 you thought were necessary to provide Barclays
3 the cushion to protect its capital at that time,
4 correct?

5 A. Not that I recall.

6 Q. Maybe it's me not understanding it,
7 but I'm trying to -- let me ask it this way.
8 Strike that.

9 On Friday morning, you took a view
10 that you didn't have sufficient cushion,
11 correct?

12 A. Uh-huh. Yes.

13 Q. And I think it follows that you
14 necessarily had to take a view as to how much
15 cushion would have been sufficient, am I
16 correct?

17 A. Is that a question?

18 Q. Yes. Am I correct?

19 A. Again, there was incredible
20 uncertainty. I was now looking at a transaction
21 which had been signed on Tuesday, which didn't
22 look like a lot of those assets were going to
23 arrive. We had problems getting collateral for
24 the \$45 billion we had outlaid to the Fed.
25 Markets were getting worse. I felt I needed as

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2 much as I could get to protect the firm.

3 Q. Okay.

4 A. And I wasn't sure what Lehman had
5 left.

6 Q. Okay.

7 A. Didn't know there was anything left.

8 Q. All right. What did you do to try to
9 determine how much Lehman left that could be
10 transferred to Barclays?

11 A. I believe I instructed Mr. Klein to
12 see if Lehman had any other assets.

13 Q. Did you tell anybody on Friday morning
14 that if Barclays were unable to come up with
15 additional assets, that it would not go through
16 with the transaction?

17 A. I don't -- I recall certainly having
18 those thoughts. I can't recall if I said that
19 to anyone specifically.

20 Q. And by "additional assets," I meant
21 additional Lehman assets, you understood?

22 A. Additional Lehman assets, yes.

23 Q. Did anybody at Lehman's object to
24 Barclays trying to identify additional assets
25 that could be transferred to it in connection

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2 with the transaction?

3 A. Not that I recall.

4 Q. At any point did anybody at Lehman
5 suggest that Barclays was being piggish?

6 A. I remember having a conversation with
7 Alex Kirk after we had tried to seek more
8 assets, and I expressed some discomfort to Alex
9 that I still didn't think we had enough assets,
10 and he said there's nothing left. And I said
11 something like to him, well, fine, we're not
12 going to be -- we're not going to be pigs and go
13 after every last nickel. We'll try to get
14 comfortable with what you have given us, and if
15 that's the case, we're done.

16 Q. So is it fair to say that Barclays
17 stopped looking for additional Lehman assets
18 when Mr. Kirk said there was nothing else left
19 to transfer to Barclays?

20 A. I recall saying to Alex that -- he was
21 very worried that we were going to walk because
22 we had asked for more assets, they had given us
23 what we could, he was worried we were going to
24 walk, and I said, okay, if this is it, if this
25 is all we can find before we go to court, you

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2 know, we'll take it, we'll take the chance, but
3 we won't kill the deal over looking for more
4 assets.

5 Q. So, based on that conversation with
6 Mr. Kirk, Barclays stopped looking for
7 additional Lehman assets, correct?

8 A. I believe that's correct.

9 Q. Do you remember when on Friday that
10 was? That would be Friday, the 19th of
11 September?

12 A. I don't recall. It was certainly -- I
13 think it was Friday afternoon, but I couldn't be
14 specific.

15 Q. Was the search for additional Lehman
16 assets going on during the same time that the
17 court hearing was taking place on Friday
18 afternoon and into the evening?

19 A. Not that I recall. I recall that we
20 had -- we had searched for the assets before the
21 court hearing and that that was the end of it.

22 Q. Again, you didn't go to court that
23 day?

24 A. Did not go to court.

25 Q. Who did go to court for Barclays,

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2 apart from its counsel?

3 A. Michael Klein. Jonathan Hughes. I'm
4 not sure who else.

5 Q. Now, do you recall what additional
6 assets were identified by Lehman on that Friday,
7 the 19th of September, which were transferred to
8 Barclays?

9 A. The final deal included the repo
10 assets, they included the buildings, they
11 included the exchange-traded derivatives and the
12 associated collateral, they included the
13 unencumbered assets that were sitting in the
14 boxes at the very -- at the clearing agencies,
15 and they included the 15c3 moneys or equivalent
16 securities to 15c3 moneys.

17 Q. When you talked about the collateral
18 supporting the exchanged-traded derivatives, was
19 that collateral in the transaction as of Friday
20 the 19th, in your view?

21 A. That -- the exchanged-traded
22 derivatives were in the transaction at the
23 beginning, and as far as I was concerned, yes,
24 they were in the transaction on the Friday
25 night, yes.

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2 Q. I'm not talking about the
3 exchange-traded derivatives themselves.

4 A. The collateral, yes.

5 Q. I'm talking about the margin.

6 A. Yes. Yes.

7 Q. It's your view that the margin for
8 those positions was in the deal from the
9 beginning?

10 A. Yes. Absolutely. You wouldn't take
11 the positions and not take the collateral
12 because you yourself have a collateral call the
13 first day.

14 Q. Do you recall there having been an
15 amendment to the language of the agreement over
16 the weekend to make certain or to include the
17 collateral supporting those positions?

18 A. No. As I recall, the language
19 associated with the --

20 Are you referring to the clarification
21 letter?

22 Q. Yes.

23 A. The original -- the clause that was in
24 the original APA that contained the derivatives
25 and the associated collateral, that clause had